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April 1, 2019

The Honorable Dan Aaron Polster
Carl B. Stokes United States Court House
801 West Superior Avenue, Courtroom 18B
Cleveland, Ohio 44113-1837

Re: Digital Media Solutions, LLC vs. South University of Ohio, LLC, et al.
Case No. 1:19 CV 145

Subject: Western State College of Law Faculty and Staff

Dear Judge Polster,

The faculty at Western State College of Law thank you for the Order of March 18, 2019 instructing the Receiver to continue funding the School of Law through May 29, 2019 (“Order”). The impact of the receivership on our students has been severe and alarming, and our first concern throughout this semester has been for our students. We greatly appreciate the critical role the Court has played in allowing the College of Law to continue its mission for the balance of the semester. The Court’s Order has enabled our third-year students to graduate and sit for the bar, prevented students from suffering forfeiture of their work this semester by an unprecedented mid-semester closure, and placed the remaining College of Law students in a better position to arrange the transfer of their credits to another institution.

The Faculty submit this letter because although the Receiver has been directed to fund the School of Law through the end of the semester, the Faculty and Staff have found themselves in a state of limbo on a number of issues. We write now to respectfully request the Court’s assistance in obtaining answers from the Receiver.

- 1. Health Insurance/Reimbursement for Withholdings Not Advanced.** Faculty and staff paychecks reflected withholdings for health insurance costs up through March 15, 2019. However, the plan administrator, Benefit Administrative Systems, LLC (“BAS”) has stated to the Court that it has not been paid for services since February 2019 (see BAS’ March 8, 2019 Memorandum in Support of Its Motion to Intervene). Thus, while

deductions to paychecks continued throughout much of the semester, the faculty and staff apparently were not entitled to benefits, nor were they made aware of the situation until BAS filed its motion. In other words, we have paid for health insurance that we appear to have not received. The faculty and staff have not been refunded for past health insurance withholdings. We therefore request the court's assistance in receiving reimbursements for withholdings for services that were not rendered.

2. **Health Insurance: Letter of Termination of Benefits.** As of the March 15 paycheck, withholdings for medical benefits were discontinued but, despite repeated emails and requests, only two faculty members have been able to obtain a letter from DCEH confirming that our insurance benefits were terminated. Without the termination of coverage letter, many faculty and staff members have been unable to obtain new insurance coverage, and faculty have experienced rejection by other insurance companies because we remain technically covered by BAS. The faculty and staff include individuals with immediate medical needs and those with children who have been forced to pay out-of-pocket for prescriptions and medical care. COBRA insurance is not an option either, because we are still employed. We therefore request the court's assistance in ensuring that employees promptly receive letters confirming the termination of medical coverage.
3. **401k accounts.** In the past, our 401ks have consistently funded on the Thursday of the week after the paycheck. Although the most recent paycheck was issued on March 29, 2019, with 401k funding expected on April 4, 2019, funding of Western State employees' 401ks was not made for the March 15, 2019 paycheck until March 29, 2019, with the notation not appearing in the employees' Fidelity accounts until today. We are still trying to ascertain whether some, most or all of the employees' Fidelity accounts have been funded. We had expected to see that contribution on March 21, as mandated by Department of Labor regulations requiring prompt fulfillment, *see generally* 29 CFR 2510.3 *et seq.*. We want to emphasize that these are *employee* contributions, not an employer contribution, and the amount was deducted from the employee paychecks, but it appears that the Receiver did not tender those employee contributions to the administrator until March 29. We are concerned because, as noted, we are expecting yet another 401k contribution for the March 29, 2019 paycheck, the funding of which should be reflected in the Fidelity accounts by April 4 of this week. Employee funds that are not deposited in a timely manner are entitled to a lost earnings/interest compensation per the Department of Labor. We believe the time frame up until the 15th business day of the next month should not be a safe harbor, especially given that our employment is on a finite timeline. Furthermore, when our employment does terminate, a letter will be needed stating that fact so we can transfer the 401k into a rollover IRA. We therefore respectfully request the court's assistance in ensuring that the Receiver (1) timely fund 401ks as delays may trigger additional compensation, and (2) be directed to timely provide the required letter to effectuate transfer of the funds upon termination of

employment.

4. **Life/Disability; Dental/Vision insurance.** We have been provided with no information about whether we still have coverage. Deductions continue to be taken from paychecks and are not employer-provided. We would appreciate the Court's assistance in obtaining confirmation from the Receiver (1) as to the status of these plans; and (2) that employees will receive reimbursements for any past premiums that were deducted but not advanced to the plan administrators.
5. **Unpaid Expense Reimbursements.** Some faculty members have unpaid expense reimbursements dating from December 2018 for previously approved expenses such as travel to academic conferences and bar membership dues. In addition, some staff members, including those who have been discharged, incurred expenses for which they have not been reimbursed. The Court's assistance in receiving clarity from the Receiver as to whether those reimbursements will be issued would be appreciated.
6. **Final Paycheck.** We understand that faculty and staff at other Argosy schools did not receive their final paychecks. The faculty and staff at Western State continue to fully perform all the functions needed to support our students through the end of the semester. As we do so, we respectfully request the Court's assistance in receiving specific assurances from the Receiver that our paychecks will be covered through the end of May, as the terms of the Order suggest.

Western State College of Law has been a respected institution in the legal community of Orange County for over 50 years, producing a significant share of the community's leading lawyers and judges. As the College of Law enters what appears to be its final chapter, every member of the faculty, in addition to their teaching, student counseling and administrative responsibilities, has been busy writing letters of recommendation for students to facilitate their transfer to another institution. Members of the staff have also worked tirelessly to accommodate students' needs, which have increased substantially this semester.

We will continue to maintain the highest level of teaching and will continued to faithfully administer our educational programs, as our students rightfully deserve. As we do so, any assistance from the Court to address the above-mentioned issues will be appreciated.

Sincerely,

Paul Arshagouni
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